

Submitted via Email and FOIA Online

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, D.C. 20460
(202) 566-1677 hq.foia@epa.gov

Re: FOIA Request for Premanufacture Notices for Certain Chemicals Subject to Determinations under Section 5(a)(3)(C) of the Toxic Substances Control Act (TSCA)

Dear Freedom of Information Officer:

This request for records is submitted on behalf of Safer Chemicals Healthy Families (“SCHF”), Natural Resources Defense Council (“NRDC”) and Earthjustice in accordance with the provisions of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 (2016), and the implementing regulations of the U.S. Environmental Protection Agency (“EPA” or the “Agency”), 40 C.F.R. Part 2. The purpose of the request is to obtain copies of premanufacture notices (“PMNs”) and related documents submitted to EPA under section 5 of the Toxic Substances Control Act (“TSCA”) for certain substances that EPA has determined are “not likely to present an unreasonable risk of injury” under TSCA section 5(a)(3)(C).

Records Requested

In accordance with FOIA, please provide us with the PMNs described below, including all PMN amendments, attachments and other information submitted by the PMN submitter. The PMNs subject to our request are identified below by the EPA-assigned PMN number and the date of the EPA “not likely” determination for the PMN substance under TSCA section 5(a)(3)(C).

P-18-0068 – 12/12/2018

P-18-0007– 12/11/2018

P-18-0008 – 12/11/2018

P-17-0281 – 12/04/2018

P-18-0212 – 11/30/2018

P-18-0147 – 11/29/2018

P-18-0279 – 11/21/2018

P-18-0261 -- 11/20/2018

P-18-0233 – 11/02/2018

P-18-0224– 10/30/2018

P-18-0225 – 10/30/2018

P-18-0030 – 10/30/2018

P-16-0354 – 10/09/2018

P-16-0355 – 10/09/2018

P-16-0483– 10/09/2018

P-16-0484 – 10/09/2018

P-18-0100 – 10/05/2018

P-18-0102 – 10/05/2018

P-18-0116 – 10/05/2018

P-18-0137 – 10/05/2018

P-18-0227 – 10/05/2018

P-18-0070 – 10/05/2018

P-18-0041 – 10/02/2018

This request seeks only the redacted non-Confidential Business Information (CBI) versions of these PMNs, amendments, attachments and related submissions. We are not seeking the unredacted CBI version of the PMNs at this time.

Fee Waiver Request

Pursuant to 5 U.S.C. § 552, we request a fee waiver because “disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 40 C.F.R. § 2.107(l)(1). As demonstrated below, all of the four factors related to the first fee waiver requirement, as specified in EPA’s FOIA regulations at 40 C.F.R. § 2.107(l)(2)(i)–(iv), weigh in favor of granting our fee waiver request. Moreover, federal courts have held that FOIA “is to be liberally construed in favor of waivers for noncommercial requesters.” *Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 106 (D.D.C. 2006) (quoting *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987)).

Factor 1: The Requested Records Concern the Operations or Activities of the Federal Government.

The subject matter of the requested records concerns “identifiable operations or activities of the Federal government.” 40 C.F.R. § 2.107(l)(2)(i). The FOIA request seeks notices (PMNs) filed by manufacturers of new chemicals under TSCA section 5. This provision of TSCA requires EPA to review the health and environmental risks of new chemicals (those not listed on the TSCA Inventory) at least 90 days before the start of commercial manufacture and directs the Agency to restrict the conditions of manufacture and use if it makes certain determinations under section 5(a)(3). However, no restrictions are warranted where EPA determines that the new chemical is “not likely” to present an unreasonable risk of injury under section 5(a)(3)(C). Such “not likely” determinations were made for the 23 chemicals covered by the request. Because the determinations themselves provide limited information, accessing

the PMNs for these chemicals is critical to better understand and analyze the basis for EPA's conclusion that they are "not likely" to present an unreasonable risk of injury. This in turn will support public oversight of how EPA is implementing the TSCA PMN program.

Factor 2: Disclosure of the Requested Records is Likely to Contribute to Public Understanding of Government Operations or Activities.

Disclosure of the requested records is "likely to contribute" to an "increased public understanding," 40 C.F.R. § 2.107(l)(2)(ii), of government operations or activities. As noted above, the PMNs provide detailed information about the 23 new chemicals, including the identity of the PMN submitter and sites where the chemical will be manufactured and processed, the nature of the manufacturing process, the chemical's uses, amounts released into the environment, the number of exposed employees and any available health and safety data. See 40 CFR Part 720. This is a considerably more detailed description of the new chemical than provided in EPA's "not likely" determinations and will contribute significantly to public understanding of how EPA evaluates the risks of new chemicals and determines whether restrictions are warranted under the Act. Neither the PMNs nor the information they contain is at this time already accessible through EPA's website. See Factor 4, below.

Factor 3: Disclosure of the Requested Records Will Contribute to the Understanding of a Broad Audience of Persons Interested in EPA's Risk Evaluations for the 10 Chemicals

Disclosure will "contribute to the understanding of a reasonably broad audience of persons interested in" tracking EPA's PMN program and reviewing and providing input on the hazard, exposure and risk considerations that inform EPA's determinations of whether they meet TSCA requirements for imposing controls on manufacture and use. The three requestors, SCHF, NRDC and Earthjustice, are non-profit organizations with a long history of representing the public interest in the safe and sustainable use of chemicals and advocating for effective implementation of TSCA.¹ They have extensive working relationships with national, state, and grassroots organizations and individual members of the public committed to assuring the safety of chemicals. They also have deep legal and scientific expertise in the assessment of chemical risks.² The requestors, along with coalition partners, have filed detailed comments on several aspects of the EPA new chemicals program, made presentations at EPA public meetings on the program and met directly with EPA staff to present their perspectives. Based on this experience and expertise, the requestors will use the 23 PMNs as the basis for submissions to and meetings with EPA staff relating to the PMN program. The requestors also have the "ability and intention to effectively convey information to the public" by virtue of its extensive network of contacts with groups and individuals following the PMN review process. 40 C.F.R. § 2.107(l)(2)(iii). In sum, because of the requestors' expertise in this area, they are well-positioned to analyze and evaluate the 23 PMNs received pursuant to this request, plan on using this information in submissions to and

¹ Indeed, the legislative history of the fee waiver provision reveals that it was added to FOIA "in an attempt to prevent government agencies from using high fees to discourage certain types of requesters, and requests," in particular those from journalists, scholars and nonprofit public interest groups. See *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984).

² Federal courts have held that public interest groups satisfy this requirement where they demonstrate an "ability to understand and disseminate the information." *Judicial Watch v. Dep't of Justice*, 122 F. Supp. 2d 5, 10 (D.D.C. 2000).

meetings with EPA about the PMN program and intend to disseminate analysis of the program to a broad audience.

Factor 4: The Contribution to Public Understanding of Government Operations or Activities Will Be Significant.

The public's understanding of government operations or activities by EPA to address the human health and environmental effects of the 10 chemicals "as compared to the level of public understanding existing prior to the disclosure, [will] be enhanced by the disclosure to a significant extent." 40 C.F.R. § 2.107(l)(2)(iv). Publicly available information about individual new chemical submissions and EPA's PMN review decisions is limited and must be enhanced, as Acting Administrator Wheeler recognized in a recent letter to Senator Tom Carper. Making available the 23 PMNs and related materials will greatly contribute to public understanding of both the individual new chemicals involved and the basis for EPA's decision not to restrict their manufacture and use based on its evaluation of their potential risks to health and the environment. No other publicly available information will perform this function to the same extent.

In addition, the second fee waiver requirement – that the request "is not primarily in the commercial interest of the requester," 40 C.F.R. § 2.107(l)(1) – is also met here. The requestors are 501(c)(3) nonprofit organizations and do not have any "commercial interest that would be furthered by the requested disclosure" of information.³ 40 C.F.R. § 2.107(l)(3)(i). Their sole interest in obtaining the requested information is to facilitate effective and meaningful public understanding of EPA's decisions on the risks of the 23 new chemicals.

In sum, this request meets the requirements for a fee waiver. In the event that fees are not waived, please notify and inform us of the basis for your decision.

Instructions For Record Delivery

Per FOIA and EPA regulations, we expect a reply within twenty working days, see 5 U.S.C. § 552(a)(6)(A)(i); 40 C.F.R. § 2.104(a), and at minimum this reply "must...indicate within the relevant time period the scope of documents [EPA] will produce." *Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm'n*, 711 F.3d 180, 182–83 (D.C. Cir. 2013). We appreciate your expeditious help in obtaining the requested information. Please also produce the records on a rolling basis; at no point should EPA's search for, or deliberations concerning, certain records delay the production of others that EPA has already retrieved and elected to produce. Please promptly make available copies of all requested records, preferably through the FOIA Online system or via email at the contact information below.

If you would like to discuss the scope of this request or other matters, please contact SCHF counsel, Bob Sussman, at bobsussman1@comcast.net. Thank you for your assistance.

Respectfully submitted,

Liz Hitchcock
Acting Director
Safer Chemicals, Healthy Families

Daniel Rosenberg
Senior Attorney
Natural Resources Defense Council

Jonathan Kalmuss-Katz
Staff Attorney
Earthjustice